

BEFORE THE STATE OF SOUTH CAROLINA  
DEPARTMENT OF INSURANCE

IN THE MATTER OF:	)	
	)	ORDER NUMBER 2008-004
Termination of the Recoupment Surcharge	)	
For Private Passenger Automobile	)	
Insurance Policies	)	
	)	
_____	)	

This matter comes before me upon application of the South Carolina Reinsurance Facility Board of Governors (Reinsurance Facility) to terminate the Reinsurance Facility recoupment fee surcharge assessed against pointed drivers of private passenger automobiles. Based on the information provided by the Governing Board of the Reinsurance Facility, I hereby find and conclude as follows:

FINDINGS OF FACT

1. S.C. Act No. 1177 abolished the Assigned Risk Plan,<sup>1</sup> and substituted in its place an unincorporated nonprofit legal entity known as the South Carolina Reinsurance Facility (Facility).<sup>2</sup> Automobile insurers were required to become participating members of the Facility as a condition of transacting business within the State of South Carolina.<sup>3</sup> The Facility served as the residual market mechanism in South Carolina from 1974 through February 2003.
2. The Facility is governed by a Board of Governors.<sup>4</sup> The day-to-day activities of the Facility are carried out pursuant to a plan of operation.<sup>5</sup>
3. The Facility reinsured, at the option of the ceding automobile insurer, the risk covered under any policy of automobile insurance.<sup>6</sup> The ceding insurer credited to the Facility

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<sup>1</sup> Section 6, 1974 S.C. Acts 1177 (1974).

<sup>2</sup> S.C. CODE ANN. § 38-77-510 (2002).

<sup>3</sup> S.C. CODE ANN. § 38-77-520 (2002) (Repealed by 1997 Act No. 154, § 30, effective January 1, 2006).

<sup>4</sup> *Id.* § 38-77-580. See *Garris v. Governing Board of the Facility and the South Carolina Reinsurance Facility*, 333 S.C. 432, 511 5.E.2d 48(1998).

<sup>5</sup> *Id.* § 38-77-520 and 38-77-530. (Repealed by 1997 Act No. 154, § 30, effective January 1, 2006).

the pure loss, profit and contingency components of the premium charged the insured.<sup>7</sup>

4. In 1997, the South Carolina General Assembly reformed the market delivery system for automobile insurance in South Carolina from the former mandate-to-write automobile insurance system to an open market with free competition via 1997 S.C. Act No. 154.<sup>8</sup> Act No. 154 was designed to accomplish a complete and comprehensive reform of automobile insurance and automobile insurance practices. Accordingly, it provided for the abolishment of the mandate to write, the South Carolina Reinsurance Facility and ultimately the recoupment charge.<sup>9</sup> The operation of the South Carolina Reinsurance Facility is scheduled to terminate no later than January 1, 2010.<sup>10</sup>
5. The Director of the Department of Insurance was required to promulgate a plan by regulation to recoup any losses remaining in the facility on March 1, 2002 or any losses accruing after March 1, 2002 only from those insureds or policyholders having insurance merit rating points as provided above. This plan had to include, but was not limited to, a schedule of recoupment and method of surcharge.
6. S.C. Code Ann. Reg. 69-63 provides the process for recouping Reinsurance Facility losses. As a part of this process, the Director of Insurance is charged with evaluating the funds collected and comparing this amount with the projected runoff of the obligations of the Facility. The Director is also given the discretion to reduce or eliminate the percentage recoupment fee surcharges.
7. The Governing Board of the Facility notified the Department of Insurance on August 13, 2008 that the estimated debt of the Facility would be eliminated in 2008. The Governing Board indicated that the current estimated debt of the Reinsurance Facility

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<sup>6</sup> *Id.* § 38-77-510. (Repealed by 1997 Act No. 154, § 30, effective January 1, 2006).

<sup>7</sup> *Id.* § 38-77-540. (Repealed by 1997 Act No. 154, § 30, effective January 1, 2006).

<sup>8</sup> This is referred to as the “mandate to write” automobile insurance. *See* S.C. CODE ANN. § 38-77-110. The South Carolina General Assembly enacted the present compulsory insurance system in 1974 in response to concerns from consumers about redlining and unfair discrimination.

<sup>9</sup> Effective March 1, 2002, the recoupment charge will be eliminated for zero pointed drivers as a result of the passage of Act No. 154.

<sup>10</sup> 2005 Act No. 43, § 4

would be funded completely if the recoupment surcharges were terminated on, or after, December 15, 2008.

8. In accordance with the requirements of S.C. Code Reg. 69-63, the Department issued SCDI Bulletin 2008-14 advising insurers of its intent to eliminate the recoupment surcharge for private passenger automobile insurance policies and solicited comments. No objections were received.
9. The Department will address the provisions of S. C. Code Ann. §§ 56-10-510 and 56-10-554 by further order after a final accounting by the Facility.

Therefore, based upon the foregoing, it is ordered that:

1. All insurers must cease the collection of recoupment surcharges on all applicable new and renewal automobile insurance policies with an effective date of December 15, 2008 or after.
2. Any resulting surplus recoupment collected in excess of the ultimate Facility debt (that is determined upon the final Facility settlement with member companies after December 31, 2009) be deposited into the General Fund until otherwise directed by enactment of the South Carolina General Assembly.

IT IS SO ORDERED.



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Scott H. Richardson  
Director